

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

MARICEL FORTEZA,

Case No. 4:23-CV-00401-ALM-BD

Plaintiff,

v.

PELICAN INVESTMENT HOLDINGS
GROUP, LLC DBA AAP AND AUTO
SERVICE DEPARTMENT, US DEALER
SERVICES, INC. DBA US AUTO,
PALMER ADMINISTRATIVE
SERVICES, INC., SING FOR SERVICE,
LLC DBA MEPCO

Defendants.

JURY TRIAL DEMANDED

**MOTION FOR CLERK'S DEFAULT JUDGMENT
AGAINST DEFENDANT US DEALER SERVICES, INC. DBA US AUTO**

COMES NOW Plaintiff Maricel Forteza, by and through the undersigned counsel, pursuant to FED. R. Civ. P. 55(b)(1), and hereby files this Motion for Clerk's Default against Defendant US Dealer Services, Inc., d/b/a US Auto in the above-styled action. Plaintiff respectfully requests that the Clerk of Court enter default judgment in the sum certain of \$57,000, plus costs. In support thereof, Plaintiff states as follows:

On May 25, 2023, the Plaintiff filed her Amended Complaint naming the Defaulting Defendant, US Dealer Services, Inc. d/b/a US Auto. (ECF No. 11). In her Prayer for Relief, the Plaintiff requested an award for a sum certain of “\$3,000 per call in statutory damages arising from the TCPA intentional violations jointly and severally against the corporation and individual for 6 calls,” “[a]n award of \$5,000 per call in statutory damages arising from violations of the Texas Business and Commerce Code 302.101(a) jointly and severally against the corporations and individual for 6 calls,” and “[a]n award of \$1,500 per call in damages arising from violations of the Texas Business and Commerce Code 305.053 jointly and severally against the

corporations and individual for 6 calls.” (Am. Compl. ¶ D., E. F.). Plaintiff has pled facts demonstrating that the Defendant acted knowingly and willfully, and such allegation has not been contravened and is deemed admitted. (Am. Compl. ¶ 35–38).

Those requests for damages are supported by each of the relevant statutory provisions. In pertinent part, 47 U.S.C. § 227(b)(3) provides a private right of action to recover “\$500 in damages for each such violation,” plus treble damages if the Defendant “willfully or knowingly violated this subsection or the regulations prescribed under this subsection.” Similarly, Texas Business and Commerce Code Section 302.302(a) provides that a person who violates Chapter 302 “is subject to a civil penalty of not more than \$5,000 for each violation.” And Texas Business and Commerce Code Section 305.053(c)(1) provides that a person who proves a TCPA violation is also entitled to the same damages under the TCPA of \$1,500 for each violation under Texas state law.

As the Plaintiff has sought statutory damages, she is suing for a sum certain and as such is entitled to a Clerk’s entry of default, pursuant to FED. R. CIV. P. 55(b)(1). *Tatum v. DBoss Funding, LLC*, No. 6:23-CV-565-JDK-KNM, 2024 WL 5098503, at *4 (E.D. Tex. Nov. 13, 2024), *report and recommendation adopted*, No. 6:23-CV-565-JDK-KNM, 2024 WL 5098051 (E.D. Tex. Dec. 12, 2024) (holding 55(b)(1) Clerk’s Default was warranted in TCPA and Texas Business and Commerce code action, as here, for a sum certain); *Jennings v. Premier Recovery Grp., Inc.*, No. 416CV00869ALMCAN, 2017 WL 4212290, at *2 (E.D. Tex. Aug. 22, 2017), *report and recommendation adopted*, No. 4:16-CV-869, 2017 WL 4181696 (E.D. Tex. Sept. 21, 2017) (granting 55(b)(1) Clerk’s Default based on statutory damages for a sum certain); *Ali v. Mountain Run Sols., LLC*, No. 4:21-CV-453-SDJ-KPJ, 2021 WL 7617198, at *4 (E.D. Tex. Dec.

22, 2021), *report and recommendation adopted*, No. 4:21-CV-453-SDJ-KPJ, 2022 WL 842849 (E.D. Tex. Mar. 21, 2022) (same).

WHEREFORE, premises considered, the Plaintiff prays that the Court enter an order directing the Clerk enter default judgment for the sum certain demanded in the complaint, of \$57,000, plus costs.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Plaintiff respectfully requests that the Court issue an order directing Clerk of Court to enter default judgment against the Defendant pursuant to FED. R. CIV. P. 55(a)(1).

RESPECTFULLY SUBMITTED AND DATED this May 2, 2025.

/s/ Andrew Roman Perrong
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CERTIFICATE OF SERVICE

I certify that I filed the foregoing via ECF on the below date, which will automatically send a copy to all attorneys of record on the case.

I further certify that I mailed a copy of the foregoing to:

US Dealer Services, Inc.
7777 Greenback Lane, Suite 107
Citrus Heights, CA 95610
Tracking Number: 00310903331480013069

Dated: May 2, 2025

/s/ Andrew Roman Perrong
Andrew Roman Perrong